



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Removal of Two Outdoor
Advertising Signs Owned by Franklin Cook on
Highway 33 in Sauk County

Case No.: TR-99-0022

FINAL DECISION

By letter dated April 20, 1999, Franklin Cook requested a hearing to review a removal order issued by the Wisconsin Department of Transportation for two signs located on the north side of State Trunk Highway 33, east of Rocky Point Road in Sauk County. Pursuant to due notice a hearing was held on March 27, 2000, in Madison, Wisconsin, before Mark J. Kaiser, Administrative Law Judge.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Franklin Cook, by

Attorney Jerome M. Ott
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Wisconsin Department of Transportation, by

Attorney Allyn Lepeska
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The Administrative Law Judge issued a Proposed Decision on June 7, 2000. The Proposed Decision affirmed the Department's removal order for one sign (the east property line sign) and found the other sign (west property line sign) may be maintained as a legal, nonconforming sign. The Department filed objections to the Proposed Decision on June 29, 2000, and Franklin Cook filed objections on July 3, 2000. In his objections to the Proposed Decision, Mr. Cook's attorney indicated that he reserved the right to make further comments on the Proposed Decision after he had an opportunity to review Exhibit 38. By letter dated July 28, 2000, Mr. Cook's attorney indicated that after reviewing a photocopy of photographs from Exhibit 38, he had no further comments to file.

Franklin Cook objected to the portion of the Proposed Decision affirming the removal order of the east property line sign. In his objections, Mr. Cook reiterated that the record contains photographic evidence that a sign in the approximate location of the sign that is the subject of the removal order existed in 1969. The existence of this sign, referred to as the "Log Cabin Restaurant sign," is acknowledged in the Proposed Decision. However, the record also contains photographic evidence showing no sign existed at that site immediately prior to and during the rebuilding of STH 33. Based on photographic evidence, it is also clear that the sign that is the subject of the Department's removal order is a new structure from the Log Cabin Restaurant sign. The sign currently at that location has two posts and is larger than the Log Cabin Restaurant sign. The sign located along the east property line can not be maintained as a legal, nonconforming sign.

The Department objected to the portion of the Proposed Decision finding the west property line sign may be maintained as a legal, nonconforming sign. In its letter objecting to the Proposed Decision, the Department alleges that it "paid Mr. Cook for the loss of income for taking the two sign structures on the west side. One was a sign leased to Vivid and the other sign is the 'second sign location on the west side on the property which is currently not rented.' Ex. 6. This would be the sign structure without advertising and black poles." Exhibit 6 includes portions of the appraisal completed by the Department when it was in the process of acquiring property from Mr. Cook for the reconstruction of STH 33. At page 17 of the appraisal, the appraiser notes:

There are a total of three highway billboard advertising and identification signs which will be affected as a result of the acquisition. These signs are adjacent to the east and west property lines. According to Mr. Cook one of these signs [is] lease[d] to Vivid Advertising at an annual rate of \$200 per year. Mr. Cook rents a sign location on the east side of the property to LaMasney Construction at an annual rate of \$350 per year. There is according to the owner a second sign location on the west side of the property [line] which is currently not rented.

The Department's compensation to Mr. Cook for the loss of the outdoor advertising signs was based on annual revenue of \$550 per year. The basis for the compensation paid to Mr. Cook for the loss of the outdoor advertising signs is confusing. The compensation was apparently calculated based on the annual lease payments for the Vivid and LaMasney signs. No compensation was expressly paid for the second sign located at the west property line at the Cook property. Additionally, as mentioned above, the appraisal specifically refers to the loss of revenue for the LaMasney sign; however, the Department is not disputing that the LaMasney sign can be maintained as a legal, nonconforming sign. The appraisal also makes no mention of the blank sign at the east property lines (shown in Exhibit 25) which was removed as part of the reconstruction of STH 33.

At the time the Department purchased land from Mr. Cook for the reconstruction of STH 33, four signs existed on his property, two at the west property line and two at the east property line. Two signs, one at each property line, were affected by the reconstruction. These two signs were removed during the reconstruction. The other two signs were not located within the right-of-way of the reconstructed STH 33. Although the Department's appraisal refers to a third sign,

Mr. Cook was only compensated for the loss of income for two signs. More importantly, it does not appear that a third sign was affected by the reconstruction project.

The sign currently located at the west property line appears to be located at the same site as the insurance sign. Although components of the sign structure have been modified, there is insufficient evidence in the record to base a finding that the modifications to the sign structure exceeded reasonable repairs of a legal, nonconforming sign. After consideration of the objections to the Proposed Decision, the Proposed Decision is adopted as the Final Decision in this matter.

Findings of Fact

The Administrator finds:

1. Franklin F. Cook owns a farm in the Town of Greenfield, Sauk County. The farm is located on the north side of State Trunk Highway 33 (STH 33) a short distance east of Baraboo.
2. The farm has been owned by the Cook family for several generations. At the east and west property lines of the farm along STH 33, various outdoor advertising signs have been erected. The date various signs were erected is unknown. However, there is evidence that some of the signs have been in existence at these sites since the 1940s.
3. STH 33 is a federal aid primary highway. The Cook property is zoned "conservancy 35."
4. In 1993, the Wisconsin Department of Transportation (Department) acquired .45 acres of land from Franklin Cook for improvements to STH 33. According to the appraisal (Exh. 6), the acquisition included three or four "highway billboards and identification signs."¹ Mr. Cook was compensated \$1,420.00 for the loss of lease income from the signs.
5. In February 1993, the signs on the east property line included a three post lighted sign structure with a blank message (blank sign) (Exh. 25) and a four post sign with a message advertising LaMasney Construction Company (LaMasney sign). The signs on the west property line included a three post sign, which was leased by Vivid Corporation and advertising Kentucky Fried Chicken and Taco John's (Exh. 5), and a two post sign advertising an insurance company (insurance sign) (Exh. 3).

¹On page 17, the appraisal report states, "There are a total of three highway billboard advertising and identification signs which will be affected as a result of the acquisition." On page 26 the Appraisal Report states, "There are a total of four highway billboard advertising and identification signs which will be affected as a result of the acquisition." The discrepancy may be explained by comment from Mr. Cook on page 15 of the Appraisal Report. According to the appraiser, Mr. Cook "indicated that there are a total of three leased land sign locations along the Hwy 33 frontage. He indicated that these locations were normally leased on a three year contract at a total annual rent of \$550. He stated he was negotiating with Kwik Trip, Inc., for an additional sign to the west of the property." Alternatively, the discrepancy may be explained by the fact that one of the signs contained two advertising messages.

6. No permits have been issued for any outdoor advertising sign on the Cook farm. However, the four signs on the property had been erected prior to March 18, 1972, and could be maintained as legal, non-conforming signs.

7. The bottom photograph on Exhibit 23 is a photograph of the signs along the east property line of the Cook property. The photograph shows three signs at this site the LaMasney sign, the blank sign (in the photograph this sign contains a message advertising Korbel Brandy) and a third sign between these two signs. The third sign is a small one post sign advertising the Log Cabin Restaurant. The date Exhibit 23 was taken is unknown; however, from the appearance of the landscape it was taken prior to the rebuilding of the highway.

8. The Department alleges it paid Mr. Cook for three signs; however, it does not appear three signs were actually on the right-of-way of the rebuilt STH 33. Regardless, the parties do not dispute that all signs located on the right-of-way of STH 33 on the Cook property were removed. The rebuilding of STH 33 was completed sometime in 1995.

9. On February 4, 1999, two signs existed on the east property line of the Cook property, the LaMasney sign and a two post sign with the message "Sign for Rent" and a telephone number (414) 895-6561 (Ex. 23, top photograph). At the west property line is a two post sign structure with no message (Ex. 2). The Department is not challenging the legal, nonconforming status of the LaMasney sign and is not seeking its removal. The Department alleges that the "Sign for Rent" structure at the east property line and the blank sign at the west property line are new structures that were erected without permits and are subject to removal.

10. The "Sign for Rent" sign appears to have been erected in approximately the same location as the "Log Cabin Restaurant" sign. The two post sign structure also is present in photographs taken by Mr. Cook during the rebuilding of STH 33 (Exhs. 14 and 15). However, this sign structure does not appear in the photographs included in an appraisal prepared for Mr. Cook (Ex. 38) and is not mentioned in the text of the appraisal. Apparently this sign structure was erected sometime between when the appraisal was prepared in 1993 and when STH 33 was rebuilt in 1995.

The sign structure is located beyond the right-of-way of the rebuilt STH 33 and, therefore, would not have been purchased by the Department at the time the Department acquired property from Mr. Cook for improvement of the highway. However, the sign was not in existence prior to March 18, 1972, and, therefore, can not be maintained as a legal, nonconforming sign. After March 18, 1972, a sign can only be erected if it has been permitted pursuant to sec. 84.30, Stats. No such permit has been issued for the subject sign. Therefore, the sign is unlawful and subject to removal.

11. The blank sign at the west property line of the Cook property appears to have been erected in approximately the same location as the sign previously referred to as the insurance sign. The insurance sign could be maintained as a lawful, nonconforming sign. The insurance sign may have been purchased by the Department in conjunction with the improvement of STH 33; however, this sign was outside of the right-of-way and was not removed during the road construction.

If the blank sign at the west property line is the former insurance sign; the sign structure has been modified since the photograph of this sign were taken in 1993. The sign structure in place on February 4, 1999, has two posts and two boards bracing those posts. The former insurance sign had two free standing posts. Mr. Cook testified that the sign blew over in a storm and was repaired. A sign owner is allowed to repair legal, nonconforming signs as long as the cost of the repairs do not exceed fifty percent of the replacement cost of the sign. No evidence was submitted of either the cost of the repairs or the replacement cost of the this sign. Accordingly, the record contains no basis to find that the cost of the repairs made to the sign exceeded fifty percent of the replacement cost of the sign. The blank sign at the west property line may be maintained as a legal, nonconforming sign.

Conclusions of Law

The Administrator concludes:

1. Pursuant to sec. 84.30(11), Stats., the sign structure containing the message "Sign for Rent" located at the east property line of the Cook property was erected after March 18, 1972, without a permit issued pursuant to sec. 84.30, Stats. The subject sign is an illegal sign and is subject to removal.
2. Pursuant to sec. 84.30(5), Stats., the blank sign structure located at the west property line of the Cook property is a legal, nonconforming sign and can continue as long as the conditions set forth at sec. Trans 201.10(2)(f), Wis. Adm. Code, are satisfied. The sign was repaired after it was knocked down by a storm; however, the Department did not show that the cost of the repairs to the sign exceeded fifty percent of the replacement cost of the sign.
3. Pursuant to secs. 84.30(18) and 227.43(1)(bg), Stats., the Division of Hearings and Appeals has the authority to issue the following orders.

Orders

The Administrator orders:

1. The removal order of the Department is affirmed with respect to the sign structure containing the message "Sign for Rent" located at the east property line of the Cook property.
2. The removal order of the Department with respect to the blank sign structure located at the west property line of the Cook property is reversed and this sign shall be allowed to continue as a legal, nonconforming sign.

Dated at Madison, Wisconsin on August 4, 2000.

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By: _____
DAVID H. SCHWARZ, ADMINISTRATOR

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